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FILED
AUG 24 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-28

In The

Supreme Court of the United States

JOHN R. VINTILLA, authorized representative of Lucretia G. Vintilla, deceased, PETITIONER

v.

SAFECO INSURANCE COMPANY, aka SAFECO INSURANCE COMPANY OF ILLINOIS

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JOHN R. VINTILLA
Counsel for Petitioner
20246 Hilliard Blvd.
Cleveland, Ohio 44116
(440) 331-5484

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE SUPREME COURT OF OHIO IN *MARGINEAN V. ALL-STATE INSURANCE COMPANY*, 18 OHIO ST. 3d 343 IS ILLEGITIMATE.

Respondent, Safeco Insurance, aka Safeco Insurance Company of Illinois, will be referred to hereafter as Safeco.

Safeco relies entirely on *Marginean* to support its arguments that the lower court ruling is correct and controlling.

The instant case and *Marginean* are analogous. The insurance contract in both cases contains a provision that is similar in substance. In *Marginean* the insurer will pay damages . . . for which the insured becomes *legally responsible* because of an auto accident. In the instant case the operative words are *legally responsible*. In essence, the role of the insurer regarding the damage issue is the same.

The Ohio Supreme Court and the lower courts deliberately disregarded the critical language of the insurance contract, i.e., that the insurer will pay damages for which the insured becomes legally responsible (obligated). The Ohio Supreme Court had decided that where the insurer, as it deems appropriate, has either settled the claim or defended an action brought against the insured, no cause of action will lie. In the instant case, Safeco settled the damage claim in total disregard of the fact that the petitioner had vigorously protested that she was not at fault for the accident.

The fatal flaw in the District Judge's decision is that he did not consider the insurance contract in its entirety. Nonetheless Safeco finds support for the settlement in the language of the policy that provides Safeco may "settle or

defend" as they consider appropriate and overlooked the fact that that provision in the policy is for the benefit of and to protect the insured. This is contrary to the "pari materia" rule and therefore impermissible.

THE ISSUANCE OF A PANEL OPINION BY THE COURT OF APPEALS IN AN APPEAL ARISING FROM A MINOR TWO-CAR FENDER-BENDER COLLISION WOULD NOT SERVE ANY JURISPRUDENTIAL PURPOSE.

Safeco refers facetiously to the December 10, 2000 accident as a "minor two-car fender-bender type" auto accident. In doing so, Safeco loses sight of or fails to comprehend the serious consequences that have resulted from the "minor two-car fender-bender type of accident" to wit:

1. Petitioner's compliance with the command of the summons without warrant and the dismissal of proceedings in the Rocky River Municipal Court constituted a seizure for purposes of the Fourth Amendment and a violation of the Petitioner's constitutional right to be free of unlawful "search and seizure."[1] (See concurring opinion of Justice Ginsburg in *Albright v. Oliver*, 510 U.S. at p. 279.)

   Petitioner was subjected to a criminal prosecution in the Rocky River Municipal Court on a sworn complaint filed by the police officer against the petitioner setting forth facts that were not known to him from personal knowledge. It is noted that the officer did not issue a citation at the scene although he

[1] This issue has been mentioned to show that a police court matter can implicate a constitutional issue and other legal questions as occurred in the instant case.

> accused the petitioner of being at fault for the accident at that time, and told her that he would refer the matter to a Magistrate. Instead of hearing from a Magistrate, petitioner received a summons without warrant from the court commanding her to appear in the court to plead to the charge. She appeared and pleaded not guilty. Petitioner appeared with Counsel in court as ordered for trial, at which time the police officer told her the case would be dismissed and it was dismissed with the approval of the prosecutor. The police officer made his accusation that the petitioner was at fault immediately after having talked to both parties at the scene. There was no independent witness to the accident. This was the full extent of the officer's investigation. A complaint charging petitioner with a violation of the law was not filed by the other party to the accident.

Safeco stated in the Brief in Opposition, p1.

> It should be noted that this is the third time Petitioner has filed a petition with this Court seeking a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit from an appeal predicated upon some aspect of the underlying automobile accident of December 10, 2000 and the resulting judicial proceedings that ensued.

In referring to the subject accident, as a "minor two-car fender bender" Safeco appears to imply that the petition for a Writ of Certiorari is frivolous and somehow unworthy of the attention of this Court. Let us analyze the factual record to determine petitioner's role in the situation.

2. After the summons was served, petitioner was compelled to engage legal counsel to defend her with all of the attendant costs and legal expenses. The defense of the petitioner was Safeco's obligation under the insurance policy contract. Rather than defending the Petitioner, Safeco compounded the violation of the contract by paying the damage claim of the other party without the knowledge and consent of the Petitioner. As a further consequence of Safeco's action in settling and paying the damage claim, Petitioner suffered anxiety, stress, humiliation, loss of liberty and invasion of her privacy. Certainly not inconsequential matters under our system of justice which guarantees constitutional due process of law and the protection against unlawful search and seizure by the Fourth Amendment to every person.

The opposing party who was involved in the accident of December 10, 2000 and claimed he was demaged as a result thereof, did not initiate the criminal proceedings in the Rocky River Municipal Court. Petitioner was brought into Court involuntarily by the wrongful action of the police officer who filed a sworn complaint containing a baseless charge which provoked the issuance of a summons without warrant that commanded Petitioner to appear in Court to plead to the charge. Thus, upon dismissal of the charge against the petitioner, we have a clear case of an unlawful seizure in violation of petitioner's Fourth Amendment right . . . At this point, Petitioner could have ended the controversy. She properly elected to seek the vindication of her constitutional rights in the federal court and presently is once again at the door of this Court asking to be let in for a final review of her grievances.

Petitioner believes that under the facts and circumstances in the record, a normal order and opinion by the lower court would have served a jurisprudential purpose.

CONCLUSION

Petitioner urges the court to issue the Writ of Certiorari to reverse the lower court's Grant of Judgment to Safeco, and to summarily grant a judgment in favor of the petitioner.

Respectfully submitted,

JOHN R. VINTILLA
Counsel for Petitioner
20246 Hilliard Blvd.
Cleveland, Ohio 44116
(440) 331-5484